

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

THOMAS J. INGRASSIA,)
)
Plaintiff,)
)
vs.) Case No. 4:11CV02062 AGF
)
KEITH SCHAFER, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's motion for a new trial, and on Defendants' motion to strike Plaintiff's motion because it is untimely. It is undisputed that the motion for a new trial was filed beyond the ten-day period for filing such a motion, as established by Federal Rule of Civil Procedure 59(b) ("[A]ny motion for a new trial shall be filed no later than 10 days after entry of the judgment."). As Plaintiff recognizes, this Court may not extend this time period. *See Fed. R. Civ. P. 6(b); Sanders v. Clemco Indus.*, 862 F.2d 161, 168 (8th Cir. 1988) ("[I]f the motion [for a new trial] is untimely made, beyond the ten-day period, the district court loses jurisdiction over that motion and any ruling upon it becomes a nullity."). Other circuits have reached the same conclusion even where the district court purports to grant an extension. *See, e.g., Schneider v. Fried*, 320 F.3d 396, 402 (3d Cir. 2003); *Weitz v. Lovelace Health Sys., Inc.*, 214 F.3d 1175, 1179 (10th Cir. 2000).

Plaintiff asks the Court to, nevertheless, consider the merits of his motion, and

then deny it as untimely. Defendants object to this proposal, as it would require them to expend resources on responding to the motion for no reason. The Court does not believe it is appropriate to consider and offer its opinion on the merits of Plaintiff's motion when it has no jurisdiction to do so. Plaintiff has filed a Notice of Appeal and will have the opportunity for appellate review of arguments he chooses to present to the Eighth Circuit Court of Appeals.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for a new trial is **DENIED** as untimely. (Doc. No. 262.)

IT IS FURTHER ORDERED that Defendants' motion to strike Plaintiff's motion for a new trial is **DENIED** as moot. (Doc. No. 266.)



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 9th day of November, 2016.